***THE HON'BLE SRI JUSTICE P.S.NARAYANA**

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+ W.P.No.919 of 1997

%Dated 26-11-2004

Anku Ramulu, S/o Linganna, Hindu, Agricultural Labourer, R/o Plot No.24,Ekachakreswara Nagar Colony, Chakki Turfa Sivar,Bodhan Taluq, Bodhan Mandal, Nizamabad District.

Vs.

$1. The Joint Collector, Nizamabad.

2. The Sulb-Collector, Bodhan, Nizamabad District.

3. Mandal Revenue Officer, Bodhan, Nizamabad District.

<GIST

>HEAD NOTE:

! Counsel for the Appellants: MR. SERLA PANDARI

^Counsel for the Respondents: G.P. FOR REVENUE

? Cases referred

1 1995 (3)ALT 458

2 W.P.No.934 of 1997 delivered by this Court.

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY SIXTH DAY OF NOVEMBER
TWO THOUSAND AND

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 919 of 1997

Between:

Anku Ramulu, S/o Linganna, Hindu, Agricultural Labourer, R/o Plot No.24, Ekachakreswara Nagar Colony, Chakki Turfa Sivar, Bodhan Tqluq, Bodan Mandal, Nizamabad Dist.

..... PETITIONER

AND

1 The Joint Collector, Nizamabad.
2 The Sub-Collector, Bodhan, Nizamabad District.
3 Mandal Revenue Officer, Bodhan, Nizamabad District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a wit, order or direction, particularly a writ in the nature of Mandamus: a) Declaring the action of the 2nd Respondent in cancelling the house of the Petitioner in Construction on plot No.24 in Ekachakreswara Nagar Colony, Chakki Turfa Sivar, Bodhan Tqluq, Bodan Mandal, Nizamabad Dist., as confirmed by respondent-1 is without jurisdiction, arbitrary, illegal and violative of art.14, 18 and 300-A of the Constitution of India. b) Declaring that the Petitioner is eligible and entitled to possess the said house in Municipal No.2-6-321 of Bodhan in terms of the house site patta and memorandum of Agreement with the A.P.State Housing Corporation Ltd., c) To award coasts;

Counsel for the Petitioner: MR.SERLA PANDARI.

Counsel for the Respondents: GP FOR REVENUE

The Court made the following:

ORDER :

1) The petitioner filed the present writ petition being aggrieved of cancellation of the allotment of the house site patta certificates relating to the building No.24 in Ekachakreswara Nagar Colony, Chakki Turfa Sivar, Bodhan taluq, Bodhan Mandal, Nizamabad District.

2. Sri Serla Pandari the learned counsel representing the petitioner had drawn the attention of the Court to the show cause notice and would contend that beneficiary is the illitam son-in-law and his mother-in-law is having agricultural lands and other aspects were not specified in the said show-cause notice. The learned Counsel also would submit that for the purpose of cancellation, the report of the Mandal Revenue Officer also had been relied upon which was not furnished to the petitioner. The

learned counsel also had drawn the attention of this Court that the authorities had not properly applied their mind and the very fact that the cyclostyle orders had been passed would go to show that these orders were made in a mechanical way. The learned counsel also pointed out to the fact that in relation to certain of the allottees, self same Joint Collector had allowed the appeals and in this view of the matter, there is discrimination. The learned counsel also had pointed out to all the grounds raised by him in the affidavit filed in support of the writ petition and placed strong reliance on a decision reported in *Macherla Narayanamma Vs.Jt.Collector,Anantapur and others and also yet another decision in Smt. Udmir Gangamma Vs. Joint Collector, Nizimabad and others* decided by this Court in the case of yet another allottee concerned virtually with the same subject matter. The learned counsel would conclude that in view of the fact that the report was not furnished to the petitioner and an adverse order was made canceling the allotment, it is in violation of principles of natural justice.

3) Per contra, the learned Government Pleader for Revenue had taken this Court through the impugned order made by the first respondent dated 10-3-1994 where the reasons had been recorded in detail. The learned counsel also would maintain that the non-compliance of the conditions had been made the ground in the show cause notice and hence, non-mentioning of other details would not vitiate in the said notice, in any way. The learned counsel also had drawn the attention of this Court to the order made by the second respondent and would point out that in the light of the reasons given by both Respondents 2 and 1 in this regard, it cannot be said that the impugned order as such suffers from any legal infirmity and the same has to be confirmed. The learned counsel would maintain that in matters of this nature, it cannot be said that necessarily personal hearing should be given to the affected party and definitely, on those grounds, it cannot be said that there is violation of principles of natural justice.

4. Heard both the counsel.

5. The petitioner had been allotted the house site in Plot No.24 for construction of the house in Ekachakreswara Nagar colony, Chakki Turfa Sivar, Bodhan taluq, Bodhan Mandal,Nizamabad District under the Housing Programme during 1960 after issuing verification. It is stated that under the housing scheme unit, cost for the house is Rs.12,000/-. The subsidy granted by the Government is Rs.1,000/- and the beneficiary's construction towards the construction of the house is Rs.300/-. The

loan was also granted for balance of amount of Rs.10,700/- at the rate of 7% interest per annum. The loanees have to pay Rs.75/- per month towards installment of the loan in 240 installments. It is also stated that the petitioner had completed all the formalities and was entitled for construction of a pucca house and petitioner also entered into an agreement with the District Manager, A.P. State Housing Corporation Ltd., Bodhan, Nizamabad District. It is further stated that the petitioner is in personal occupation of the

house constructed under the said scheme and the petitioner has been paying the Municipal taxes also. The show cause notice was issued by the Sub-Collector, (Assistant Collector, Bodhan), through the Mandal Revenue Officer stating that he had received a report from the Mandal Revenue Officer, Bodhan stating that the some of the allottees are not residing in the houses and they had kept them vacant. It appears that he had also reported that some of them had not remitted loan amount of Rs.12,000/- incurred for construction of the houses. The said notice was issued in cyclostyled form. The alleged report of the Mandal Revenue Officer was not supplied to the petitioner. It is stated that the petitioner had submitted his explanation to the Sub-Collector, Bodhan denying the allegations, and also requested him to direct the Mandal Revenue Officer, Bodhan-third respondent therein to conduct further enquiry in this regard. It is further stated that the Sub-Collector Bodhan-second respondent herein by his proceedings No.B/451/91 dated 17-7-1992 had passed an order to vacate the petitioner, along with certain other orders and aggrieved by the same, the petitioner preferred appeal before first respondent and first respondent dismissed the same in E2/3136/93 non 15-03-1994. It is stated that second respondent had not considered the explanation submitted by the petitioner and made the order in cyclostyled form. It is also stated that in a similar matter, the appeal of one Satyanarayana was allowed and in this view of the matter, there is discrimination.

6. No counter affidavit is filed denying these allegations.

7. As could be seen from the impugned order, it is clear that the first respondent had placed a strong reliance on the report of the Mandal Revenue Officer and also the findings recorded by the second respondent while making the original order in this regard. It is also not in controversy that the said report was not supplied to the petitioner nor he was put on notice. It is also not in controversy that the show cause notice does not specify the other reasons that he is the illitam son-in-law or the properties which had been referred to said to be of his mother-in-law and other

aspects. In Macherla Narayanamma Vs. Jt.Collector, Anantapur and others as referred above, it was held that when an adverse order is made based on a report, supply of copy of the said report to the effected person before making the order is mandatory and a decision adversely affecting the interest of the party can not be taken without hearing that party and enquiry to be made only in the presence of the party.

8. It is needless to say that by virtue of the allotment made, the petitioner is entitled to the property in question and a legal right had accrued to him in relation to the said property. When the petitioner is being deprived of such right, the authorities are expected to put the petitioner on notice of the grounds on which such allotment would be liable to be cancelled even in the show cause notice, otherwise, it can be said that show cause notice is vague for want of other details or particulars. Apart from this aspect of the matter, in a similar case, this Court expressed the same opinion in W.P.No.934 of 1997 dated 19-3-2004.

9. In the facts and circumstances of the case, it cannot be said that the order impugned by first respondent and the order of second respondent which had been confirmed by the first respondent to be in accordance with law since the said orders are vitiated by violation of the principles of natural justice.

10. In view of the facts and circumstances, especially in view of the fact that the orders of second respondent and first respondent cannot be sustained for the reasons specified supra, the said orders are hereby quashed and the Writ Petition is accordingly allowed. In the peculiar circumstances of the case, this Court makes no order as to costs.

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P.S. NARAYANA, J

Dated 26th November, 2004.

L.R.Copy to be marked.

B.O

Dvs

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Saturday, the Twenty sixth day of November, Two thousand and four.

Copies :

To

The Honourable Sri Justice P.S.Narayana, for his Lordship's kind perusal.

1. The Joint Collector, Nizamabad.
2. The Sub-Collector, Bodhan, Nizamabad District.
3. Mandal Revenue Officer, Bodhan, Nizamabad District.

4. Eight L.R.Copies (8)
5. The Under Secretary, Ministery of Law, Justice and Company affairs, New Delhi.

6. The President, High Court Bar Association, High Court Buildings, Hyderabad.

7. Two CCs to the GP for Revenue, High Court Buildings, Hyderabad.(OUT).

8. Two CD copies.

THE HONOURABLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION NO.919 OF 1997

26th November, 2004